THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 18760 of 2006

Dated: 16-10-2006

Between:

M/s Sri Ramachandra Bar & Restaurant,
Guntur.

..... PETITIONER

AND

Government of A.P., through its
Commissioner of Prohibition and Excise,
Hyderabad and three others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 18760 of 2006

O R D E R:

This writ petition is filed seeking a declaration that the order of the second respondent-Deputy Commissioner of Prohibition and Excise, Guntur, dated 07-08-2006, rejecting the application of the petitioner for grant of 2B licence is arbitrary and illegal.

The petitioner proposed to establish a Bar and Restaurant in the premises bearing Dr.No.6-25-2, Donka Road, 1st lane, Arundelpet, Guntur and accordingly made an application seeking licence under Andhra Pradesh Excise (Grant of License of selling by Bar and Conditions of Licence) Rules, 2005 (for short 'the Rules'). Aggrieved by the inaction on the part of the respondents in considering his application for grant of licence, the petitioner earlier filed W.P.No.15965 of 2006. The said writ petition was disposed of by this Court by order dated 01-08-2006 with a direction to the respondents to consider the request of the petitioner and pass appropriate orders within a period of one week. Meanwhile, the application of the petitioner was processed and on the basis of the report of the Prohibition and Excise, Superintendent, Guntur, dated 29-07-2006, stating that the premises of the proposed Bar is situated 85 meters away from a place of worship (Church), the impugned order, dated 07-08-2006, was passed rejecting the application of the petitioner. The said order is under challenge in this writ petition contending that as per the ground plan prepared by the General Surveyor,

Mandal Corporation, Guntur, the distance between the premises in question and the Church is 103.38 meters and if it is measured from left side of the road, it is 110 meters and therefore the stand taken by the respondents that the premises is situated within the prohibited area of 100 meters is without any basis and consequently the impugned order of rejection is illegal.

I have heard the learned counsel for both the parties and perused the material on record.

Rule 6 of the Rules provides certain restrictions on grant of licence in Form 2B for establishing a bar and restaurant. Sub rule (1) of Rule 6 provides that a licence in form 2B shall not be granted within 100 meters from educational institution recognized by the government, places of public worship such as Temples registered by the Endowments Department, Mosques registered with the Wakf Board, Churches and Hospitals. The explanation to sub rule (1) of Rule 6 of the Rules prescribed the procedure to be followed for measuring the distance as under:

*"**Explanation :-** For the purpose of this rule*

(a) "Place of public worship" means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf;

(b) "Educational Institutions" means any Primary School, Middle School and High School recognised by the State Government or Central Government, Junior College or any College affiliated to any University established by law.

(c) "High Way" means National High Way or State Highway and shall not include the part of the National Highway or State Highway which passes within the limits of Municipal Corporation, Municipal Council or the Gouthan in any village or Panchayat area.

(d) "Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds.

The distances referred above shall be

measured from the mid-point of the entrance of the proposed Bar premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship or to the entrance of the first house of the predominantly residential area."

Though in the counter affidavit filed on behalf of the respondents it is pleaded that the distance between the premises in question and the church was measured strictly as per the Rues, the learned counsel for the petitioner while placing reliance upon the ground plans prepared by the Town Surveyor, Municipal Corporation, Guntur, vehemently contended that the said measurements were incorrect and that they were not taken in accordance with the procedure prescribed under the statutory Rules.

Though such a disputed question of fact cannot be gone into by this Court, since admittedly the measurements were not taken in the presence of the petitioner, I am of the opinion that to meet the interest of justice it would be appropriate to reconsider the matter after re-measuring the distance between the premises in question and the church in the presence of the petitioner.

Accordingly, the impugned order is set aside and the writ petition is disposed of with a direction to measure the distance between the premises in question and the church in the presence of the petitioner following the procedure prescribed under Rule 6(1) of the Rules and on the basis of such measurements to pass appropriate orders with regard to the request of the petitioner for grant of 2B licence afresh in accordance with law. No costs.

G. ROHINI, J

Dated: 16-10-2006
KLP